

No. 11014

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.
VERNON ECKMAN and ALEX KARVONEN,
Appellees.

Transcript of Record

Upon Appeal from the District Court for the Territory of
Alaska, Third Division

FILED

JUN 12 1945

PAUL P. O'BRIEN,
— CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

NOEL K. WENNBLOM,

United States Attorney,
Anchorage, Alaska,

Attorney for United States of America,
Plaintiff and Appellant.

DAVIS & RENFREW,

Attorneys at Law,
Anchorage, Alaska,

Attorney for Vernon Eckman and Alex
Karvonen, Defendants and Appellees.

In the District Court for the Territory of Alaska,
Third Division

No. V-2370, Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

20 BEAVER SKINS and VERNON ECKMAN
and ALEX KARVONEN,

Defendants.

LIBEL OF INFORMATION

The libel of information of Joseph W. Kehoe, United States Attorney for the Third Division of the Territory of Alaska, who prosecutes on behalf of the United States of America and being present in Court in his proper person in the name of the United States of America and against 20 Beaver Skins and Vernon Eckman and Alex Karvonen and all of the persons intervening therein, in a cause of forfeiture, alleges as follows:

I.

That Carlos M. Carson, a duly appointed, qualified and acting Wildlife Agent, acting in his official capacity as such, did, on or about the 18th day of May, 1940, within the Third Division of the Territory of Alaska, seize 20 Beaver Skins which were then and there in the possession of Vernon Eckman and Alex Karvonen, and turned the same over to the custody of James H. Patterson, United States Marshal for the Third Division of the Terri-

tory of Alaska, and the said United States Marshal now has the same in his possession. [2]

II.

That the said 20 Beaver Skins above described were possessed by the said Vernon Eckman and Alex Karvonen in violation of the Alaska Game Laws and the rules and regulations promulgated thereunder and the statute in such case made and provided and against the peace and dignity of the United States of America, in that the said Vernon Eckman and Alex Karvonen, between the 10th day of April, 1940 and the 10th day of May, 1940, at and within the Katmai National Monument, Third Division, Territory of Alaska, said Monument being then and there an area wherein a continuous closed season exists on all land fur bearing animals, take and kill said 20 beaver, and did then and there possess and transport said beaver skins within and outside of said Katmai National Monument aforesaid.

III.

And the said Attorney for the United States, on behalf of the United States, says that all and singular the premises are true and by reason thereof and by force of the statute in such case made and provided the said 20 Beaver Skins are forfeited to the United States of America.

Wherefore, he prays the usual process and monition of this Honorable Court to issue in this behalf; and that said Vernon Eckman and Alex Karvonen and other interested persons be cited and admonished in general and special to answer the

premises, and all due proceedings being had thereon, that for the causes aforesaid and others appearing the said 20 Beaver Skins, as above set forth, be condemned by the definite sentence and decree of this Court as forfeited to the use of the United States in such case made and provided and the rules and regulations pertaining thereto.

/s/ JOSEPH W. KEHOE

United States Attorney [10]

United States of America,
Territory of Alaska—ss.

Joseph W. Kehoe, being first duly sworn on his oath, deposes and says: I am the United States Attorney for the Third Division, Territory of Alaska; I have read the foregoing libel of information, know the contents thereof and believe the same to be true.

/s/ JOSEPH W. KEHOE

Subscribed and sworn to before me this 15th day of August, 1940.

[Seal] /s/ CURTIS R. MORFORD

Deputy Clerk, District Court.

[Endorsed]: Filed Aug. 17, 1940. [4]

[Title of District Court and Cause.]

ORDER FOR ISSUANCE OF MONITION AND
SERVICE OF NOTICE

Upon reading and filing the Libel of Information of Joseph W. Kehoe, United States Attorney for

the Third Division of the Territory of Alaska, praying for process and for a decree of this Court forfeiting to the United States of America 20 beaver skins, described in said Libel of Information, and seized by Carlos M. Carson, Wildlife Agent in and for the Territory of Alaska, on the 18th day of May, 1940, at Naknek, Alaska, because and for the reason that the same were taken and killed within the Katmai National Monument, an area wherein a continuous closed season exists on all land fur bearing animals, and also praying for process of monition to all persons setting up or asserting any titles or rights of property, claim or demand of any kind in or to said skins of any of them, and particularly to Vernon Eckman and Alex Karvonen, it is therefore

Ordered that a monition be issued by the Clerk of this Court, citing the said Vernon Eckman and Alex Karvonen and all other persons asserting any right, title, claim or demand of any kind in or to any of said 20 beaver skins, to [5] appear and be in this Court and make proof of their respective claims in open Court at the Courtroom of said Court in the City of Anchorage, Alaska, on the 14th day of October, 1940, at 10 o'clock in the morning of said day, or be forever barred and precluded therefrom; and it is further

Ordered that the United States Marshal for the Third Division of the Territory of Alaska make service of this monition by posting copies of the same in three public places within the Third Division of said Territory and by mailing copies of

the libel of information to Vernon Eckman and Alex Karvonen, at Naknek, Alaska, together with a copy of the monition.

Dated at Valdez, Alaska, this 26 day of August, 1940.

/s/ SIMON HELLENTHAL
District Judge

Entered Court Journal No. V-20, Page No. 122.
Aug. 26, 1940.

[Endorsed]: Filed Aug. 26, 1940. [6]

[Title of District Court and Cause.]

MONITION

The President of the United States of America,
to the United States Marshal for the Third
Division, Territory of Alaska, Greeting:

Whereas a libel of information has been filed in the District Court for the Territory of Alaska, Third Division, against 20 Beaver Skins by Joseph W. Kehoe, United States Attorney for said Division and Territory, and against said Vernon Eckman and Alex Karvonen, said skins having been seized by Carlos M. Carson, Wildlife Agent for Alaska, from the said Vernon Eckman and Alex Karvonen, of Naknek, Alaska, and claims that said 20 beaver skins are forfeited to the United States for the reasons and causes in said libel alleged and mentioned, and praying for the usual process and monition of the said Court in that behalf to be

made and that all persons interested in said 20 beaver skins may be cited in general and special to answer the premises and all proceedings being had the said 20 beaver skins be condemned and forfeited to the said United States.

You are therefore commanded to detain said 20 beaver skins in your custody until the further order of this Court, and to give due notice to all persons claiming the [7] same or knowing or having anything to say why the same should not be condemned and forfeited to the United States pursuant to the prayer of said libel of information, and particularly to Vernon Eckman and Alex Karvonen, whose addresses are Naknek, Alaska, that they be and appear before said Court at Anchorage, Alaska, on the 14th day of October, 1940, at the hour of ten o'clock in the morning of said day, and you are hereby Ordered to make service of this monition upon all such persons as are described by posting copies thereof in three public places within the Third Division of said Territory, and by mailing a copy of this monition and of said libel of information to the above mentioned Vernon Eckman and Alex Karvonen, whose addresses are Naknek, Alaska, and hereon make due return to this Court.

Witness the Honorable Simon Hellenthal, Judge of said Court, and the Seal of said Court hereto affixed this 26th day of August, 1940.

[Seal] /s/ M. E. S. BRUNELLE

Clerk District Court

United States of America,
Territory of Alaska—ss.

This is to Certify that I received the attached and foregoing Monition on the 26th day of August, 1940, and that I served the same on the 26th day of August, 1940, by posting three copies of said Monition in three public places in the Third Division of Alaska, to wit: One on bulletin board of Valdez Post Office, one on bulletin board at front door of Court House and one on bulletin board at the Pinzon, in the Town of Valdez and by mailing on said date a copy of said Monition and of the Libel of Information to Vernon Eckman and Alex Karvonen, of Naknek, Alaska.

Dated at Valdez, Alaska, this 26th day of August, 1940.

JAMES H. PATTERSON

U. S. Marshal

By J. M. REGAN

Deputy.

[Endorsed]: Filed Aug. 26, 1940. [9]

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska,
Third Judicial Division—ss.

Edward V. Davis being first duly sworn deposes and says: That the firm of Davis & Renfrew was

retained on or about the ninth day of October, 1940, to represent the defendants Vernon Eckman and Alex Karvonen, and to make their claim for the above mentioned Beaver skins. That defendants reside at Naknek, and that communication with that place has been interrupted for a large part of the time since this case was turned to the firm of Davis & Renfrew, due to bad flying weather. That in order for defendants' attorneys to prepare a defense to this action and a claim for such Beaver skins, it is necessary that defendants' attorneys have more information from the defendants, and in particular about a certain Court Action held at Naknek in this connection. That defendants request thirty days additional to get this information.

EDWARD V. DAVIS

Subscribed and sworn to before me this fourteenth day of October, 1940.

[Seal]

MARY E. FASNACHT

Notary Public for Alaska

My Commission expires 10/19/43.

[Endorsed]: Filed Oct. 14, 1940. [10]

[Title of District Court and Cause.]

MOTION

Comes now Vernon Eckman and Alex Karvonen, of the defendants named above, and move the Court that a Continuance may be granted in this matter in order to enable defendants to prepare their de-

fense and their claim to the above named Beaver skins.

This motion is based on all the records and files in this action, and upon the affidavit of Edward V. Davis, of defendants' attorneys.

Dated this fourteenth day of October, 1940.

VERNON ECKMAN and
ALEX KARVONEN,
By DAVIS & RENFREW,
Per EDWARD V. DAVIS

[Endorsed]: Filed Oct. 14, 1940. [11]

[Title of District Court and Cause.]

CLAIM OF PROPERTY

Comes now Verner Eckman and Alex Karvonen, the above named individual defendants, by and through their agents and attorneys-in-fact, Davis & Renfrew, and they are the owners in common of that certain property described above as twenty Beaver Skins, and that they are entitled to the possession thereof. That such beaver skins were lawfully taken by the defendants Verner Eckman and Alex Karvonen under the provisions of the Alaska Game Laws, and under the rules promulgated in accordance therewith, and that such skins were wrongfully taken from said defendants and are being wrongfully withheld from them.

Wherefore the defendants Verner Eckman and Alex Karvonen lay claim to the afore mentioned

twenty beaver skins and pray that the same may be returned to them.

VERNER ECKMAN and
ALEX KARVONEN,
By DAVIS & RENFREW
/s/ By EDWARD V. DAVIS

AFFIDAVIT OF EDWARD V. DAVIS

United States of America,
Territory of Alaska,
Third Judicial Division—ss.

Edward V. Davis, being fully duly sworn, upon his oath deposes and says: That he is a partner in the firm of [12] Davis and Renfrew, and that as such partner he has the authority to act for the defendants *Verner Eckman* and *Alex Karvonen* in the above entitled matter under and by virtue of a certain power of attorney given the firm of Davis and Renfrew by the said defendants. That he has investigated the circumstances of the seizure of the above mentioned Beaver skins, and believes such seizure to have been made wrongfully and without legal sanction. That he believes that the foregoing claim of *Verner Eckman* and *Alex Karvonen* is just and legally justified. That he has read the within and foregoing Claim of Property, knows the contents thereof, and that the same is true as he verily believes. That he believes the claimants to be the true and bona fide owners of the property described as twenty beaver skins. That he makes this affidavit of verification for the defendants *Verner Eckman* and *Alex Karvonen* for the reason

that the defendants Verner Eckman and Alex Karvonen are not at the place where this claim has been prepared or at the place where this matter is pending, but are in fact in the remote interior of the Territory of Alaska at a point far from any reasonable method of communication.

/s/ EDWARD V. DAVIS

for Verner Eckman and Alex
Karvonen, Claimants.

Subscribed and sworn to before me this fifteenth day of November, 1940.

[Seal]

MARY E. FASNACHT

Notary Public for Alaska

My commission expires 10/19/43.

Copy of this claim received this 22nd day of November, 1940.

/s/ H. P. NOGGLE

[Endorsed]: Filed Nov. 22, 1940. [13]

[Title of District Court and Cause.]

EXCEPTIONS TO LIBEL

Comes now Verner Eckman and Alex Karvonen, the owners and claimants of the above described Beaver Skins, and hereby except to the libel of information against such skins by Joseph W. Kehoe, for the following reasons:

First: Such libel does not specify where in the Third Division, Territory of Alaska, such skins

were seized, and whether such seizure was made upon land or upon water.

Second: That such libel of information does not state as to where the aforementioned beaver skins are now kept by the United States Marshall.

Third: That such libel of information is ambiguous and uncertain in that it can not be ascertained therefrom as to whether such skins are claimed to be forfeit because they are alleged to have been trapped unlawfully or because they are alleged to have been transported unlawfully inside of Katmai National Monument, or because they are alleged to have been transported unlawfully outside of such national monument, or because such skins were unlawfully possessed. Further, if such skins are claimed to be forfeited because they were unlawfully transported or because they were unlawfully possessed, [14] it does not set forth as to the nature of the unlawful possession or transportation.

Fourth: Such libel of information does not separately propound in distinct articles the matters relied upon as grounds of forfeiture.

Dated this sixteenth day of November, 1940.

VERNER ECKMAN and

ALEX KARVONEN,

By DAVIS & RENFREW

Attorneys-in-Fact and Attorneys
at Law for the above
Claimants, per

/s/ EDWARD V. DAVIS

Copy of these exceptions received November 22, 1940.

/s/ H. P. NOGGLE

[Endorsed]: Filed Nov. 22, 1940. [15]

[Title of District Court and Cause.]

ANSWER

Comes now Verner Eckman and Alex Karvonen, the owners of the above named beaver skins, and the claimants thereof, and make answer to the libel of information filed against such skins by Joseph W. Kehoe, as follows:

I.

Admit that Carlos M. Carson did on or about the 18th day of May, 1940, seize the above mentioned skins, but specifically deny that such seizure was made in said Carson's official capacity.

II.

Deny that such skins were turned over to the custody of James H. Patterson, United States Marshal for the Territory of Alaska, Third Division, or that such skins are now in the possession of such marshal, for the reason that defendants Eckman and Karvonen have no knowledge as to what was done with the skins after they were seized, and have no knowledge upon which to form any belief as to such matters, and thus they deny the same.

III.

Admit that such skins were at the time of their seizure in the possession of Vernon Eckman and Alex Karvonen. [16]

IV.

Deny specifically that such skins were possessed by Vernon Eckman and Alex Karvonen in violation of the Alaska Game Laws and the rules and regulations promulgated thereunder.

V.

Deny specifically that such beaver were taken and killed at and within Katmai National Monument, Third Division, Territory of Alaska.

VI.

Deny specifically that such beaver skins were possessed within Katmai National Monument.

VII.

Deny that said beaver skins were transported within Katmai National Monument.

VIII.

Deny that said beaver skins were unlawfully transported or possessed outside of the confines of such Katmai National Monument.

IX.

Deny specifically that such skins are forfeited for the reasons stated or for any reasons at all.

For a further answer, and by way of affirmative defense to the aforementioned libel of information,

Verner Eckman and Alex Karvonen allege as follows:

I.

That during the open Season on Beaver, and at a place where under the Alaska Game Laws and the regulations propounded thereunder it is legal to trap beaver, Verner Eckman and Alex Karvonen did trap the twenty beaver mentioned in the libel of information. That they transported such beaver skins to Naknek, Third Division, Territory of Alaska, and that thereupon such skins were wrongfully and unlawfully seized by one [17] Carlos Carson. That such skins are lawfully the property of Verner Eckman and Alex Karvonen, and that Verner Eckman and Alex Karvonen are entitled to have the said skins returned to them.

Further answering the allegations contained in such libel of information, and by way of affirmative defense thereto, Verner Eckman and Alex Karvonen, the owners and the claimants of said beaver skins alleges as follows:

That the unlawful taking and killing of said twenty beaver within Katmai National Monument, an area in which a continuous closed season exists on all land fur bearing animals and the alleged unlawful possession and transportation of such skins which are alleged in said libel of information and which are hereby answered, are the same alleged unlawful taking and killing of beaver within Katmai National Monument where a continuous closed season exists on all land fur bearing animals, and the same alleged unlawful possessions and

transportations of such skins, as are recited in a criminal information filed against Verner Eckman and Alex Karvonen by Carlos M. Carson, on the eighteenth day of May, 1940, before William B. Reagan, United States Commissioner for Naknek, Kvichak Precinct, Third Division, Territory of Alaska. That under such criminal information the United States of America appeared as plaintiff and Verner Eckman and Alex Karvonen appeared as defendants. That all of the alleged unlawful acts set forth in the libel of information herein were at issue under such criminal charge, and that all of the evidence which would be necessary to establish, and competent under the various assignments and charges of violation set out in the libel of information herein, would also be competent, and would tend to establish the allegations of such criminal information. That all the alleged unlawful matters alleged in the libel of information relate to the same subject-matter, and are based upon the same [18] transactions, as the various allegations in said criminal information. That at the time when said criminal information was made on the part of the United States of America and at the time when it was tried as hereinafter set forth, all of the facts which would be competent to sustain the allegations of plaintiff's libel herein were known to and within the possession of the representative of the United States of America who made the said information. That the charges in said criminal information contained the same charges in substance and effect, and are the same allegations of offenses and violations,

and are founded on the same sections of the statutes of the United States and the regulations thereunder, as the matters and things herein alleged in plaintiff's libel. Defendants further allege that all and singular of said matters were presented to the Court in the case of *United States of America vs. Verner Eckman and Alex Karvonen*, and were tried by such Court, and that the defendants *Verner Eckman and Alex Karvonen* were found not guilty of such charges, and the court rendered a judgment acquitting the defendants *Verner Eckman and Alex Karvonen* of such alleged violations alleged in said criminal information, and all of which alleged violations are the same violations now set out by plaintiff and answered by these defendants.

Wherefore claimants and defendants *Verner Eckman and Alex Karvonen* pray that the libel of information may be dismissed and the twenty beaver skins here in issue returned to defendants.

VERNER ECKMAN and

ALEX KARVONEN,

by their Attorneys in Fact,

DAVIS & RENFREW, per

/s/ EDWARD V. DAVIS

United States of America,

Territory of Alaska,

Third Division—ss.

Edward V. Davis, being first duly sworn, deposes and says: That he makes this verification for and on behalf of *Verner Eckman and Alex Karvonen*. That he is duly authorized to make this answer

and verification by such defendants Verner Eckman and That he makes this verification for the said Verner Eckman and Alex Karvonen for the reason that Verner Eckman and Alex Karvonen are not present at the place where this affidavit of verification is made, but are in fact in the interior of Alaska, at a place difficult of access during the winter time. That he has read the above and foregoing answer, knows the contents thereof, and that he believes the same to be true.

EDWARD V. DAVIS

Subscribed and sworn to before me this sixteenth day of November, 1940.

[Seal] /s/ MARY E. FASNACHT

Notary Public for Alaska

By commission expires 10/19/43.

[Endorsed]: Filed Jan. 25, 1941. [20]

[Title of District Court and Cause.]

MOTION

Comes now the above named defendants, Vernon Eckman and Alex Karvonen, by and through their attorneys, Davis and Renfrew, and move Exceptions to Plaintiff's Libel filed by such defendants may be withdrawn, and that defendants' Answer presented herewith be filed in the above entitled cause.

This motion is based upon the fact that J. W. Kehoe, United States Attorney, and Davis and Ren-

frew, attorneys for the defendants, have agreed upon the points raised by defendants' exceptions.

Dated, this 21st day of January, 1941.

DAVIS & RENFREW

Attorneys for Defendants,

By /s/ EDWARD V. DAVIS

[Endorsed]: Filed Jan. 25, 1941. [21]

[Title of District Court and Cause.]

DEMURRER

Comes now Joseph K. Kehoe, United States Attorney for the Third Division of the Territory of Alaska, and demurs to the allegation of paragraph one of defendants' further Answer and affirmative defense and the whole thereof, on the grounds that the same does not state facts sufficient to constitute a defense to said action.

/s/ JOSEPH W. KEHOE

United States Attorney

[Endorsed]: Filed April 7, 1941. [22]

[Title of District Court and Cause.]

M. O. OF CONTINUANCE

Now at this time, on the reading of the calendar, the plaintiff being represented by Noel K. Wennblom, United States Attorney, the claimants being represented by William W. Renfrew, Esq.,

It Is Ordered that the cause be, and it hereby is, continued for thirty days.

Entered Court Journal No. G 4, Page No. 337,
Aug. 17, 1942. [23]

[Title of District Court and Cause.]

M. O. SETTING CAUSE FOR TRIAL

Now at this time, on motion of William W. Renfrew, Esq., of counsel for defendants in the above-entitled cause, J. Gerald Williams, Assistant United State Attorney, consenting thereto,

It Is Ordered that the above-entitled cause be, and it hereby is, set for trial to follow the trial of cause No. A-2821, entitled Felix Nekutis, Plaintiff, vs. Evan Jones Coal Company, a corporation, Defendant.

Entered Court Journal No. G 6, Page No. 203,
May 3, 1943. [24]

[Title of District Court and Cause.]

HEARING ON DEMURRER TO DEFENDANTS' ANSWER

Now at this time came J. Gerald Williams, Assistant United States Attorney, for and in behalf of the Government, came also Edward V. Davis and William W. Renfrew, Esqs., for and in behalf of the defendants, for hearing on demurrer to defendants' answer.

Argument to the Court was had by J. Gerald Williams, Assistant United States Attorney, for and in behalf of the Government.

Argument to the Court was had by Edward V. Davis, Esq., for and in behalf of the defendants.

Whereupon the Court, being fully and duly advised in the premises, took the matter under advisement.

Entered Court Journal No. G 6, Page 206, May 3, 1943. [25]

[Title of District Court and Cause.]

M. O. OVERRULING DEMURRER TO
DEFENDANTS' ANSWER

Now at this time came J. Gerald Williams, Assistant United States Attorney, for and in behalf of the Government, and this cause having heretofore and on the 3rd day of May, 1943, come on for hearing on plaintiff's demurrer to defendants' answer, and the Court having taken the matter under advisement, and being fully and duly advised in the premises, now gives its oral decision, and

It Is Ordered that plaintiff's demurrer to defendants' answer be, and it hereby is, overruled, and plaintiff be, and hereby is, given thirty days to reply.

Entered Court Journal No. G 6, Page No. 222, May 5, 1943. [26]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON THE
PLEADINGS

Comes now Davis & Renfrew, Attorneys for Vernon Eckman and Alex Karvonen, defendants, and move for Judgment in favor of the defendants upon the pleadings, and that plaintiff's Libel of Information may be dismissed, and the twenty beaver skins at issue in this action may be ordered to be returned to the defendants according to the Prayer of defendants Answer.

This Motion is based upon the fact that a Demurrer was filed to defendants' further Answer and affirmative defense by J. W. Kehoe, United States Attorney, for and on behalf of the United States of America, plaintiff, and that such Demurrer was argued on the third day of May, 1943, and that the same was overruled by the Court on the fifth day of May, 1943, and the plaintiff was given thirty days to reply to defendants' Answer. That more than thirty days have elapsed since the said fifth day of May, 1943, and that no reply has been made to the affirmative matter set up in defendants' Answer, all as will more fully appear from the records and files of this action.

Dated this 10th day of July, 1943.

DAVIS & RENFREW

Attorneys for Defendants

By /s/ EDWARD V. DAVIS

Copy received this 10th day of July, 1943.

NOEL K. WENNBLOM

United States Attorney

By /s/ M. PEDERSEN

[Endorsed]: Filed July 10, 1943. [27]

[Title of District Court and Cause.]

MOTION

Comes now Noel K. Wennblom, United States Attorney for the Third Division of the Territory of Alaska, and moves this Honorable Court for leave to file herein a demurrer to the second affirmative defense set forth in the answer of said defendants, upon the grounds that said second affirmative defense does not state facts sufficient to constitute a defense to said action.

Dated this 16th day of December, 1943.

/s/ NOEL K. WENNBLOM

United States Attorney

Service of a copy of the above motion hereby acknowledged this 16th day of December, 1943.

DAVIS & RENFREW

Attorney for Defendants

/s/ M. FASNACHT

[Endorsed]: Filed Dec. 17, 1943. [28]

[Title of District Court and Cause.]

ORDER

This matter having come on this day before the court upon the motion of the United States of America, the plaintiff herein made by and through Noel K. Wennblom, United States Attorney, for leave to file herein a demurrer to the second affirmative defense set forth in the answer of said defendants now on file herein, upon the grounds and for the reason that said second affirmative defense does not state facts sufficient to constitute a defense to said action, and good cause appearing therefor,

It Is, Therefore, Ordered that the plaintiff be and he is hereby granted leave to file such a demurrer.

/s/ SIMON HELLENTHAL
District Judge

Service of a copy of the above order hereby acknowledged this 17th day of December, 1943.

/s/ W. RENFREW
Attorney for Defendants

Entered Court Journal No. G-7, Page No. 389,
Dec. 17, 1943.

[Endorsed]: Filed Dec. 17, 1943. [29]

[Title of District Court and Cause.]

DEMURRER

Comes now Noel K. Wennblom, United States Attorney for the Third Division of the Territory of Alaska, and demurs to the second affirmative defense set forth in the answer of the defendants now on file herein, and the whole thereof, on the grounds and for the reason that the same does not state facts sufficient to constitute a defense to said action.

/s/ NOEL K. WENNBLOM

United States Attorney

Service of a copy of the above demurrer hereby acknowledged this 16th day of December, 1943.

DAVIS & RENFREW

Attorney for Defendants

/s/ M. FASNACHT

[Endorsed]: Filed Dec. 17, 1943. [30]

[Title of District Court and Cause.]

M. O. SETTING TIME FOR HEARING
ON DEMURRER

Now at this time on the Court's own motion, the plaintiff being represented by Raymond E. Plummer, Assistant United States Attorney, the defendants being represented by Davis & Renfrew;

It Is Ordered, that the demurrer to the second affirmative defense in defendants' Answer in Cause No. V-2370 entitled United States of America, plaintiff, vs. 20 Beaver Skins and Vernon Eckman

and Alex Karvonen, defendants, be and is hereby, set for hearing at 10:00 o'clock A.M. of Wednesday, October 11, 1944.

Entered Court Journal No. G-9, Page No. 97,
Oct. 9, 1944. [31]

[Title of District Court and Cause.]

HEARING ON DEMURRER

Now at this time came Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government, came also Edward V. Davis, Esq., of counsel for the defendants, in Cause No. V-2370 entitled United States of America, plaintiff, vs. 20 Beaver Skins and Vernon Eckman and Alex Karvonen, defendants, and the hearing on the demurrer to the second affirmative defense in defendants' Answer was had.

Whereupon, after hearing the arguments of the respective counsel, the Court took the matter under advisement.

Entered Court Journal No. G 9, Page No. 17,
Oct. 11, 1944. [32]

[Title of District Court and Cause.]

M. O. RENDERING DECISION

Now at this time came Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government, came also Edward V.

Davis, Esq., of counsel for the defendants in Cause No. V-2370 entitled United States of America, plaintiff, vs. 20 Beaver Skins and Vernon Eckman and Alex Karvonen, defendants, and the Court having heretofore and on the 11th day of October, 1944 heard argument of respective counsel on the demurrer to the second affirmative defense in defendants' Answer, and at this time being fully and duly advised in the premises overruled the demurrer with reservations until trial of cause.

Entered Court Journal No. G 9, Page No. 128, Oct. 13, 1944. [33]

United States District Court, Third Division,
Territory of Alaska

No. V-2370, Civil

THE UNITED STATES OF AMERICA

vs.

20 BEAVER SKINS and VERNON ECKMAN
and ALEX KARVONEN

PRAECIPE FOR SUBPOENA ON BEHALF
OF UNITED STATES

The Clerk of said Court will issue Subpoena for the following-named persons to appear before said Court, at the United States Court Rooms, in Anchorage, at ten o'clock A.M., on the 6th day of November, 1944, then and there to testify in behalf of the United States:

Ernest Allen, Naknek, Alaska.

Charlie Anderson, Naknek, Alaska.

Annie Anderson, Anchorage, Alaska.

C. M. Carson, Dillingham, Alaska.

This 4th day of November, 1944.

Subpoena issued: November 4, 1944.

/s/ RAYMOND E. PLUMMER

Assistant United States Atty.

[Endorsed]: Filed Nov. 4, 1944. [34]

[Title of District Court and Cause.]

M. O. OF DISMISSAL

Now at this time, on the Court's own motion, Noel K. Wennblom, United States Attorney, being present and objecting thereto, to which objection an exception was granted;

It Is Ordered, that Cause No. V-2370 entitled United States of America, plaintiff, vs. 20 Beavers Skins and Vernon Eckman and Alex Karvonen, defendants, be, and the same is hereby dismissed.

Entered Court Journal No. G 9, Page No. 272,
Nov. 16, 1944.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court, and to Vernon Eckman and Alex Karvonen, and their at-

torneys, Edward V. Davis, Esquire, and William W. Renfrew, Esquire:

Take notice that the plaintiff in the above entitled action hereby appeals to the United States Circuit Court of Appeals, Ninth Circuit, from the final minute order made and entered in said cause on the 16th day of November, 1944, by the District Court for the Territory of Alaska, Third Division, dismissing said cause in favor of the defendants and against the plaintiff, and from the whole of said final minute order.

Dated this 15th day of February, 1945.

/s/ NOEL K. WENNBLOM

United States Attorney

Attorney for Plaintiff-

Appellant

Service acknowledged by receipt of a copy of the above and foregoing Notice of Appeal this 13th day of February, 1945.

/s/ EDWARD V. DAVIS

Attorney for Defendants.

[Endorsed]: Filed Feb. 15, 1945. [36]

[Title of District Court and Cause.]

PETITION FOR APPEAL

Comes now the plaintiff, the United States of America, by Noel K. Wennblom, United States Attorney, Third Division, Territory of Alaska, and feeling itself aggrieved by that certain final minute

order, entered in the above entitled cause on the 16th day of November, 1944, wherein said cause was dismissed, prays an appeal therefrom, and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, the particulars, wherein it considers said final order erroneous, are set forth in the assignment of errors which is filed herewith and to which reference is hereby made.

Wherefore, the premises considered, your petitioner prays that an appeal in its behalf in the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of and herewith duly assigned, be allowed and granted and that a transcript of the records, papers and documents upon which the final order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and petitioner prays a reversal of said final minute order. [37]

Dated at Seward, Alaska, this 15th day of February, 1945.

/s/ NOEL K. WENNBLOM

United States Attorney, Anchorage, Alaska, Attorney for Plaintiff-Appellant.

Receipt of copy acknowledged this 13th day of February, 1945.

/s/ EDWARD V. DAVIS

Attorney for Defendants.

[Endorsed]: Filed Feb. 15, 1945. [38]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the plaintiff, The United States of America, by Noel K. Wennblom, United States Attorney, Third Division, Territory of Alaska, and in connection with its petition of appeal, file the following assignment of errors, on which it will rely on its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final minute order entered in the above entitled Court and cause on the 16th day of November, 1944, dismissing said cause.

I.

The Court erred in dismissing said cause for the reason that said dismissal was contrary to law.

II.

The Court erred in making and ordering entered its minute order on the 16th day of November, 1944, dismissing said cause, for the reason that the same is contrary to law.

III.

The Court erred in making and entering its order on the 5th day of May, 1943, overruling the demurrer to the allegations of paragraph one (1) of defendants further answer and affirmative defense, and the whole thereof, which demurrer was filed in said cause on the 7th day of April, 1941, by the [39] plaintiff, for the reason that said order is contrary to law.

IV.

The Court erred in overruling the demurrer to the allegations of paragraph one (1) of defendants further answer and affirmative defense, and the whole thereof, which demurrer was filed in said cause on the 7th day of April, 1941, by the plaintiff, for the reason that the same is contrary to law.

V.

The Court erred in making and entering its order on the 13th day of October, 1944, overruling the demurrer to the second affirmative defense set forth in the answer of the defendants, and the whole thereof, which demurrer was filed in said cause on the 17th day of December, 1943, by the plaintiff, for the reason that said order is contrary to law.

VI.

The Court erred in overruling the demurrer to the second affirmative defense, set forth in the answer of the defendants, and the whole thereof, which demurrer was filed in said cause on the 17th day of December, 1943, by the plaintiff, for the reason that the same is contrary to law.

Dated at Seward, Alaska, this 15th day of February, 1945.

/s/ NOEL K. WENNBLOM

United States Attorney, Anchorage, Alaska, Attorney for Plaintiff-Appellant.

Receipt of a copy acknowledged this 13th day of February, 1945.

/s/ EDWARD V. DAVIS

Attorney for Defendants.

[Endorsed]: Filed Feb. 15, 1945. [40]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

On this day came the United States of America, the plaintiff in the above entitled cause, and presented its petition for an appeal, and an assignment of errors accompanying the same, which petition, upon consideration by the Court is hereby allowed.

And, It Is Hereby Ordered by the Court that the appeal prayed for be, and the same is hereby allowed and granted to the United States Circuit Court of Appeals for the Ninth Circuit from the final minute order, and the whole thereof, made and entered in the above entitled Court and cause on the 16th day of November, 1944, dismissing said cause.

Done by the Court and entered order at Seward, Alaska, this 15th day of February, 1945.

/s/ ANTHONY J. DIMOND

District Judge

Receipt of copy is hereby acknowledged this 13th day of February, 1945.

/s/ EDWARD V. DAVIS

Attorney for Defendants.

[Endorsed]: Filed Feb. 15, 1945.

Entered Court Journal No. G 9, Page No. 532,
Feb. 15, 1945. [41]

[Title of District Court and Cause.]

CITATION ON APPEAL

To the Defendants, Vernon Eckman and Alex Karvonen, and their attorneys, Edward V. Davis, Esquire, and William W. Renfrew, Esquire:

You, and each of you, are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, California, in said Circuit, within forty (40) days from the date hereof, pursuant to an order allowing an appeal, duly entered in the Clerk's office in the District Court for the Territory of Alaska, Third Division, at Anchorage, Alaska, in that certain action wherein The United States of America is plaintiff and you are defendants, as above entitled and wherein the said United States of America, is appellant to show cause, if any there be, why the final minute order, and the whole thereof entered therein on the 16th day of November, 1944, ordering that said cause be dismissed, should not be reversed and corrected and why a

speedy justice should not be done to appellant, the said United States of America.

Witness the Honorable Anthony J. Dimond, Judge for the District Court for the Territory of Alaska, Third Division, [42] and the seal of said Court hereunto affixed this 15th day of February, 1945.

[Seal] /s/ ANTHONY J. DIMOND
Judge of the District Court for the Territory of
Alaska

Attest:

 /s/ A. M. THOMAS
 Chief Deputy Clerk of said
 Court

Service of the foregoing Citation on Appeal by receipt of copy thereof acknowledged this 19th day of February, 1945.

 /s/ EDWARD V. DAVIS
 Attorney for Defendants

[Endorsed]: Filed Feb. 15, 1945.

Entered Court Journal No. G 9, Page No. 532,
Feb. 15, 1945. [43]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court, Territory of
Alaska, Third Division:

You will please make, certify, and transmit, at
the expiration of ten (10) days from the date

hereof, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a true copy of all of the following indicated portions of the record in the above entitled cause, as the transcript to be used on the appeal of the plaintiff, The United States of America, from the final minute order dismissing said cause, made and entered in said cause on the 16th day of November, 1944, to wit:

1. Libel of Information.
2. Order for Issuance of Monition and Service of Notice.
3. Monition.
4. Affidavit of Edward V. Davis (filed October 14, 1940).
5. Motion for Continuance (filed October 14, 1940).
6. Claim of Property (filed November 15, 1940).
7. Exceptions to Libel (filed November 16, 1940).
8. Answer.
9. Motion to Withdraw Exceptions (filed January 25, 1941). [44]
10. Demurrer (filed April 7, 1941).
11. Minute Order of Continuance (entered August 17, 1942).
12. Minute Order Setting Cause for Trial (entered May 3, 1943).
13. Journal Entry re Hearing on Demurrer to Defendant's Answer (entered May 3, 1943).
14. Minute Order Overruling Demurrer to Defendants' Answer (entered May 5, 1943).
15. Motion for Judgment on the Pleadings.

16. Motion for Leave to File Demurrer (filed December 17, 1943).

17. Order Granting Leave to File Demurrer.

18. Demurrer (filed December 17, 1943).

19. Minute Order Setting Time for Hearing on Demurrer (entered October 9, 1944).

20. Journal Entry re Hearing on Demurrer (entered October 11, 1944).

21. Minute Order Rendering Decision (entered October 13, 1944).

22. Praecipe (filed November 4, 1944).

23. Minute Order of Dismissal (entered November 16, 1944).

24. Notice of Appeal.

25. Petition for Appeal.

26. Assignment of Errors.

27. Citation on Appeal.

28. This Praecipe.

Dated this 10th day of February, 1945.

/s/ NOEL K. WENNBLOM

United States Attorney, Anchorage, Alaska, Attorney for Plaintiff-Appellant. [45]

Service acknowledged by receipt of a copy of the above and foregoing Praecipe this 19th day of February, 1945.

/s/ EDWARD V. DAVIS

Attorney for Defendants.

[Endorsed]: Filed Feb. 19, 1945. [46]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 46 pages, numbered from 1 to 46, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the praecipe filed in my office on the 19th day of February, 1945; that the foregoing transcript has been prepared, examined and certified to by me.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court this 2nd day of March, 1945.

[Seal] M. E. S. BRUNELLE

Clerk of the District Court, Territory of Alaska,
Third Division.

[Endorsed]: No. 11014. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Vernon Eckman and Alex Karvonen, Appellees. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Third Division.

Filed March 21, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.